IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3485 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SB JOSHI - Petitioner(s)
Versus
STATE OF GUJARAT & ORS & 2 - Respondent(s)

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Appearance :
MR PRADEEP PATEL for Petitioner
MR SIRAJ GORI, AGP, for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/06/2006

ORAL JUDGMENT

1. The petitioner who is a retired Government employee has challenged the order of punishment passed by the Government dated 5th August 1994 by which it was decided to impose a cut of Rs.50

per month in the pension payable to the petitioner for a period of five years.

2. For certain alleged incident of the year 1979, a chargesheet came to be issued against the petitioner in the year 1982. While the said proceedings were pending, the Government decided to pass an order of retiring the petitioner prematurely. This order was passed on 5th May 1987. The order itself recorded that the pending inquiries against him would continue despite his retirement. It appears that Inquiry Officer was appointed in the year 1987 and oral inquiry was completed in the year 1991. The inquiry report was prepared in March 1991 and forwarded to the Government. After tentatively accepting the conclusions of the Inquiry Officer, the same was served to the petitioner along with show cause notice enabling him to make his representation. The petitioner filed his representation. The Government, however passed the impugned order 5th August 1994 imposing limited cut in pension for five years.

3. Broadly stated, the learned advocate for the petitioner submitted that the inquiry was delayed unreasonably. For the alleged incident of 1979, final order of punishment came to be passed in the year 1994. There was thus, according to him, a gross delay of nearly 15 years in completing the proceedings. He submitted that the petitioner was made to retire in the year 1987 and the inquiry could not have

been therefore protracted. In this regard, reliance was placed on a decision of the Division Bench of this Court in the case of M.N.Mewada v. State of Gujarat, 1976 (2) SLR 666. It was additionally submitted that the Inquiry Officer came to the conclusion that there was no ill-intention on the part of the petitioner in transport of the cement and it was only on account of the emergent situation and to save the Government money that the petitioner had undertaken certain steps which at worst would amount to procedural defects. The learned advocate pointed out that the Inquiry Officer clearly concluded that there was no malafide intention on the part of the petitioner and that the lapses were merely procedural lapses. He, therefore, concluded that the charges were only partially proved. He pointed out that the Government also accepted the conclusion of the Inquiry Officer. He, therefore, submitted that the Government could not have resorted to cut in pension which could be done only in case of grave misconduct.

4. On the other hand, learned AGP Shri Gori opposed the petition. He submitted that the charges against the petitioner were proved. However procedural, there were lapses on the part of the petitioner which cannot be condoned. He submitted that delay by itself is not sufficient to quash the inquiry proceedings and the ultimate penalty.

5. Having heard the learned advocates for the parties, I find that there is no justification whatsoever in the gross and inordinate delay in initiation and conclusion of the inquiry. There is no dispute about the fact that the charges pertained to a incident took place in the year 1979. Chargesheet was issued in the year 1982. Oral inquiry was completed in the year 1991 and the final order of penalty was passed in the year 1994. In the meantime, the petitioner was made to prematurely retire in the year 1987. In the facts of the case, I find that the Government could not have prolonged the inquiry, that too against a retired Government servant. After issuance of the chargessheet in the year 1982, it took nearly five years even to appoint an Inquiry Officer. No reasons are forthcoming for this delay. Thereafter also, from the year 1987, when the Inquiry Office was appointed, till 1994 when the final order of punishment was passed, there is no reason why the delay took place. There is no explanation whatsoever for the delay. The observations made by the Division Bench of this Court in the case of M.N.Mewada (supra) would therefore apply to the facts of the present case wherein it was held that a retired employee should not be left in uncertainty of pendency of inquiries long after his retirement and that it is expected that pending inquiry against retired Government servants should be completed expeditiously.

6. Even otherwise, I find that the impugned order was without considering any of the aspects of the matter. Without assigning any reasons or without even taking into account any of the contentions raised by the petitioner by a non-speaking order penalty was imposed. Apparently, the Government also sought the advise of the GPSC, a copy of which was never supplied to the petitioner till passing of the final order. Additionally, it is also apparent that the Inquiry Officer concluded that there was no malafide intention on the part of the petitioner and that the lapse was purely one of procedural. The Government in fact, agreed with this view of the Inquiry Officer. Considering all these aspects of the matter, I find that the impugned order cannot be sustained. The same is therefore quashed. The petitioner shall be restored the pension already recovered. This shall be done within four weeks from the date of receipt of a copy of this order. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)